

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 343 OF 2014

Sau. Vandana Rahul Gandale,
Age 28 years, Occu. Household
and Service, R/o. Vikas Nagar,
Bashi Road, Latur, Tal. & Dist.
Latur.

**....Appellant.
(Ori. Resp. In RCA)**

Versus

Rahul s/o. Dattu Gandale,
Age 32 years, Occu. Pvt. Service,
R/o. Vikas Nagar, Bashi Road,
Latur, Tal & Dist. Latur.

**....Respondents.
(Ori. Appellant in RCA)**

Mr. Hemant Survey, Advocate for appellant.

Mr. S.S. Halkude, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 7th June, 2016.

JUDGMENT :

1) The appeal is filed against judgment and decree of Regular Civil Appeal No. 129/2012, which was pending in District Court, Latur. The first appeal of present respondent, husband filed against judgment and decree of H.M.P. No. 62/2010, which was filed for divorce by present appellant wife, is allowed by the District Court and the decree of dissolution of marriage given by the Trial Court is set aside. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

It is the case of wife that her marriage with respondent was solemnized as per Budha customs in Pune on 9.4.2007. It is contended that parents of both spouses were not present at the time of marriage and it was witnessed by two friends of the present respondent husband. It is contended that certificate in respect of marriage is issued by Bhartiya Budha Mahasabha Pune. No child is born out of this wedlock. It is the case of wife that there was the cohabitation of only two days after the marriage and then she was driven out of the matrimonial house by the husband after giving illtreatment to her. It is her case that husband had asked her to bring Rs. ten lakh for his business and when this demand was not met with, she was deserted by the husband.

3) It is the case of wife that on 25.2.2010 an attempt was made by her and her parents to settle the dispute so that the husband accepts her in matrimonial house. It is contended that the husband and his relatives refused to accept her in matrimonial house and they insisted that the demand of Rs. ten lakh must be met with first. It is her case that another attempt was made on 5.3.2010 by her to convince the husband, but that

attempt also failed. It is her case that the husband then started saying that he did not like her and that is the reason for which he and his parents are not ready to accept her in the matrimonial house. It is contended that due to this conduct of the husband, she requested the husband on 9.3.2010 to give divorce, but the husband refused to give divorce and so, she was required to approach the Court for divorce. The divorce was claimed on two grounds like desertion and cruelty.

4) The husband filed written statement and contested the matter. He admitted that the marriage was solemnized at Pune. He contended that there was consent of parents of both the sides for the marriage. He contended that the wife was taking education and as she wanted to complete the degree course of Engineering she returned to Latur. It is the case of husband that the wife was living in the house of his parents and also in the house of parents of the wife as the house of parents of wife is situated right in front of house of parents of husband.

5) It is the case of husband that after taking degree of Engineering, the wife got job in M.S.E.D.C.L. in July 2008 and then the conduct of the wife changed. It is his case that the wife then started keeping distance from him and from his relatives. It

is contended that there is instigation of parents to his wife to live separate from him and due to such instigation, she deserted him and she wants divorce. He contended that in January 2010 he attempted to bring back the wife to matrimonial house, but she refused to return to matrimonial house. He denied the allegations of illtreatment and desertion made against him.

6) During the pendency of the proceeding, the husband applied for getting interim maintenance and maintenance at the rate of Rs. 700/- per month was granted and cost of Rs. 1000/- was also granted. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The wife examined her father, but the husband did not examine any other witness.

7) The Trial Court had held that the parties had started living separate immediately after the marriage and so, the period of separation was of more than two years. The Trial Court had held that the wife had proved that there was illegal demand of money from the husband and for that demand, the husband had deserted her. By holding that both desertion and cruelty were proved by wife, decree of divorce was given by the Trial Court. The First Appellate Court has held that the wife never cohabited with the husband and so, there was no question of

desertion and cruelty.

8) The evidence of the wife is consistent with the aforesaid pleadings. The father of the wife has given evidence that two months prior to filing of the proceeding in 2010, the petitioner wife disclosed to him about the marriage and about the illtreatment and desertion. He has given evidence that he made an attempt to reconcile the matter and to convince the husband to accept the petitioner wife in the matrimonial house, but he refused to do so. He has also given evidence that the demand of Rs. ten lakh was made by husband and his relatives.

9) In the written statement, husband had not admitted that the marriage was solemnized in absence of the parents of both the sides, but in cross examination he gave clear admission that only two friends were present as witnesses to the marriage. He has denied the allegation made against him of demand of money and cruelty to which wife was allegedly subjected.

10) The evidence of the parties as a whole shows that they had love affair and they knew each other since the year 1999. The evidence as a whole shows that there was virtually no cohabitation between the parties and immediately after the

marriage, the wife had returned to Latur. The reasons given for the same are different by both the sides, but they admit that immediately after marriage wife returned to Latur, native place and there was virtually no cohabitation at Pune. The wife has given evidence that she continued to live with her parents and the incident of marriage was not disclosed to the father till the year 2010. Suggestion was given to wife in the cross examination that she had lived in the house of parents of present respondent at Latur, but that suggestion is denied. Further, there was no specific pleading of any such period in written statement. There is no specific pleading as to since when the wife left the house of the parents of the husband and the reason for her separate residence.

11) The evidence of both the sides show that meeting was held by the parents of both the sides. The side of wife has given evidence that husband refused to accept her back in the matrimonial house and the condition was put that his demand of Rs. ten lakh needs to be met with first. Husband admits in the cross examination that for reconciliation such meeting was held.

12) In the cross examination of the wife it is brought on the record that she used to see the husband in a garden from

Latur. This circumstance shows that the wife was not living in the house of parents of the husband and they used to see each other secretly as marriage was not disclosed to parents by them. The husband has not given reason for non disclosure of marriage to the parents of both the sides. He has given evasive answers to many relevant questions and that is done to avoid to give some admissions. He, however, has admitted that only his friends attended the marriage. He admits that he had place of residence at Pune and the wife had no such accommodation at Pune. He admits that father of the wife has no objection to this marriage. In addition to this evidence, there is the evidence of Nashiket, father of the wife to the effect that he tried to reconcile the matter and he tried to convince the husband. Parents are not examined by the husband to give evidence in rebuttal. These circumstances create probability that the parents of the husband were against this marriage and due to that the husband did not disclose the marriage to anybody including his parents and due to opposition of parents, he was not accepting wife in the matrimonial house. These circumstances also show that respondent had taken the petitioner to Pune by making arrangement of creation of record of marriage. These circumstances are sufficient to infer that he was making income. He has given admission that he has made short film. He is M.Sc.

and the wife was receiving education at the relevant time. In spite of all these circumstances when the wife filed proceeding for divorce the husband applied to the court for getting interim maintenance. All these circumstances speaks loud against the husband. In the Court he has tried to say that he was never employed, he never got job and he is not doing any business even of film making. These circumstances need to be considered in the light of the allegations made against him that he was asking the wife to give him Rs. ten lakh for his business. The particulars of illtreatment are given by the wife in her evidence which include the illegal demand of money.

13) The evidence as a whole is sufficient to prove that there was a cohabitation of hardly two days after 9.4.2007 and so, the parties were living separate for more than three years prior to the date of petition. The admission of the wife that she used to see the husband in a garden is not sufficient to infer that there was the cohabitation. It can be said that she was eager to resume cohabitation, but the husband never made such an attempt. It is the wife who took first step for reconciliation and then she took the step like filing divorce proceeding. The submissions made show that after filing of the divorce proceeding, husband had filed a proceeding for restitution of

conjugal rights, but he did not prosecute the matter and the matter came to be dismissed. These circumstances are sufficient to infer that husband had no intention to cohabit with the petitioner.

14) The learned counsel for husband placed reliance on some reported cases like **AIR 1972 SUPREME COURT 459 [Smt. Rohini Kumari Vs. Narenddra Singh]**, **AIR 1979 ALLAHABAD 316 [Gopal Krishan Sharma Vs. Dr. Mithilesh Kumari Sharma]**, **AIR 1991 CALCUTTA 176 [Smt. Elokeshi Chakraborty Vs. Sri Sunil Kumar Chakraborty]**, and **AIR 1992 ALLAHABAD 260 [Smt. Vimlesh w/o. Sri. Prakash Chand Sharma Vs. Sri Prakash Chand Sharma s/o. Ram Prasad Sharma]**. In these cases, the Apex Court and High Courts have observed that without *animus deserendi* no charge of desertion can be established. There cannot be dispute over this proposition. The relevant material in that regard is already quoted by this Court. The factum of separation for the period of more than two years is established and the husband could not give reasonable explanation for the separate residence. On the other hand, the evidence of wife and the reasons given by the wife are convincing and the Trial Court believed both the wife and her father. In view of the material on the record and its

appreciation done by the Trial Court and as no other material was available, the Appellate Court ought not to have interfered in the findings given by the Trial Court in favour of the wife. In aforesaid cases some observations are made regarding the meaning of 'cruelty' and nature of evidence which is required to be given to establish 'cruelty'. Further, it is also observed that what amounts cruelty depends upon the facts and circumstances of each and every case. The aforesaid material is sufficient to establish in the present matter that there was the cruelty and due to the conduct of the husband, the wife cannot be expected to continue the relationship with him.

15) The learned counsel for wife had placed reliance on the case reported as **AIR 1988 SUPREME COURT 121 (1) [Shobha Rani Vs. Madhukar Reddy]**. In this case, the Apex Court has laid down that demand of dowry amounts to cruelty for such purpose. In the case reported as **AIR 2010 SUPREME COURT 1042 [Manisha Tyagi Vs. Deepak Kumar]**, the Apex Court has observed that physical violence need not be established for proof of cruelty. It is laid down that from the conduct of the parties, it can be inferred that the petitioner cannot be expected to put up with abnormal conduct of other side. In the present case also, both the parties are educated and

the husband's conduct was of aforesaid nature. It can be said that the harassment to the wife was of such nature that she cannot be expected to put up with such conduct of the husband. The observations made by the Apex Court in aforesaid cases can be used against the husband in the present matter.

16) This Court has no hesitation to observe that the District Court has committed error in not considering the aforesaid material. The relevant circumstances and the admissions given by the husband are not at all considered by the District Court and unnecessary weight is given to the circumstance that immediately after the marriage wife returned to Latur and she started living with her parents. We are living in such a society that the lady like petitioner cannot raise voice and she is expected to do everything after taking the consent of the husband. The husband was against the disclosure of the marriage even to the parents and it was up to him to take the wife to his house for cohabitation. Though the parties are educated, the fact remains that the male is still in dominating position in our society. The material is sufficient to infer that husband treated the wife with cruelty and he avoided to take the wife to his house for cohabitation. The Trial Court had considered these circumstances in proper perspective and the decree of

divorce was given by the Trial Court. This Court holds that the decision of the District Court needs to be set aside to restore the decree of divorce.

17) In the result, the appeal is allowed. The judgment and decree delivered by the District Court, Latur is hereby set aside. The judgment and decree of the Trial Court by which decree of divorce was given is hereby restored.

[T.V. NALAWADE, J.]

SSC/